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Attorneys for Defendant Wal-Mart Associates, Inc.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

CHRISTOPHER NELSON, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

WAL-MART ASSOCIATES, INC. and DOES
1 through 50, inclusive,

Defendant(s).

Case No.:

[District Court Case No. 20-TRT 00004 1E]

**NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. §§ 1331, 1367,
AND 1441**

PLEASE TAKE NOTICE that Wal-Mart Associates, Inc. (“Defendant”), by and through undersigned counsel, hereby files this Notice of Removal of Action Pursuant to 28 U.S.C. §§ 1331, 1367, and 1441 (“Notice”) of this case from the First Judicial District Court of the State of Nevada, in which it is now pending, to the United States District Court for the District of Nevada. The federal question jurisdiction of this Court is invoked under 28 U.S.C. § 1331 and supplemental jurisdiction over state law claims is invoked under 28 U.S.C. § 1367.

I. State Court Action

Plaintiff Christopher Nelson (“Plaintiff”) filed this action against Defendant in the First Judicial District Court of the State of Nevada on December 23, 2020, Case No. 20-TRT 00004 1E (the “State Court Action”). (*See* true and correct copies of the Plaintiff’s Collective and Class Action

Complaint against Defendant (“Complaint”) attached hereto as **Exhibit A** and Plaintiff’s Civil Cover Sheet, attached hereto as **Exhibit B.**) A copy of the Summons and Complaint was served on the registered agents for Defendant on December 31, 2020. (*See* a true and correct copy of the Declaration of Service filed on January 20, 2021, attached hereto as **Exhibit C.**) To date, it does not appear that the Summons been returned to the Court for docketing. (*See* as true and correct copy of the Docket, attached hereto as **Exhibit D.**)

The State Court Action generally alleges that Defendant required Plaintiff and all warehouse workers at Defendant’s food distribution warehouses in the “dry” and “cold” sections of the warehouse to engage in various pre-shift work activities off the clock and without compensation. (*See generally*, **Exhibit A.**) Thus, Plaintiff filed this suit alleging the following causes of action: (1) failure to pay overtime wages in violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §207; (2) failure to pay minimum wages in violation of the Nevada Constitution; (3) failure to pay wages for all hours worked in violation of NRS 608.140 and 608.016; (4) failure to pay overtime wages in violation of NRS 608.140 and 608.018; and (5) failure to timely pay all wages due and owing upon termination pursuant to NRS 608.140 and 608.020-.050. (*See id.*)

II. This Court Has Federal Question Jurisdiction Under 28 U.S.C. § 1331

A. Plaintiff’s Claims Assert a Federal Question

Plaintiff’s First Cause of Action alleges violations of the FLSA; specifically, failure to pay overtime wages in violation of the FLSA, 29 U.S.C. §207. (*See* Ex. A, ¶¶ 39-43.) The FLSA is a federal law. Accordingly, Plaintiff’s Complaint presents federal question jurisdiction under 28 U.S.C. § 1331.

B. This Court Has Supplemental Jurisdiction Over Plaintiff’s Remaining State Law Claims Under 28 U.S.C. § 1367

Plaintiff’s Complaint also alleges state law wage claims, including Defendants’ alleged failure (i) to pay minimum wages in violation of the Nevada Constitution; (ii) to pay wages for all hours worked in violation of NRS 608.140 and 608.016; (iii) to pay overtime wages in violation of NRS 608.140 and 608.018; and (iv) to pay all wages due and owing upon termination pursuant to NRS 608.140 and 608.020-.050. These state law claims arise from the same alleged occurrences

1 and/or common nucleus of operative facts that underlie Plaintiff's federal FLSA claims. The
 2 Complaint makes clear that each of Plaintiff's claims, including the state law claims, are related to
 3 allegations of Defendant's alleged failure to pay Plaintiff and other employees for pre-shift work
 4 performed off the clock. This Court, therefore, has supplemental jurisdiction over Plaintiff's
 5 remaining state law claims pursuant to 28 U.S.C. § 1367.

6 **III. This Removal Is Timely**

7 Plaintiff served Defendant on December 31, 2020. As this Notice is being filed on January
 8 29, 2021, less than 30 calendar days after the Complaint was served on Defendant, the removal is
 9 timely.

10 **IV. Requirements For Removal**

11 Defendant has met all other requirements for removal as follows:

12 A. Defendant attaches to this Notice as **Exhibits A through D**, copies of "all process,
 13 pleadings and orders" served upon it pursuant to 28 U.S.C. § 1446(a).

14 B. Defendant has also concurrently filed a copy of this Notice in the First Judicial
 15 District Court for the State of Nevada.

16 C. Defendant has served a copy of this Notice upon Plaintiff's counsel.

17 D. All named Defendants have been served and consent to the removal of Plaintiff's
 18 action.

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1 E. This Notice is executed pursuant to Federal Rule of Civil Procedure 11.

2 DATED this 29th day of January, 2021.

3 **OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.**

4
5 /s/ Dana B. Salmonson

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CERTIFICATE OF SERVICE

I hereby certify that I electronically transmitted the foregoing **NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§ 1331, 1367, AND 1441** to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

Mark R. Thierman
Joshua D. Buck
Leah L. Jones
Joshua R. Hendrickson

Pursuant to FRCP 5(b), I hereby further certify that service of the foregoing document was also made by depositing a true and correct copy of same for mailing, first class mail, postage prepaid thereon, at Las Vegas, Nevada, to the following:

Mark R. Thierman
Joshua D. Buck
Leah L. Jones
Joshua R. Hendrickson
Thierman Buck LLP
7287 Lakeside Drive
Reno, NV 89511
Attorneys for Plaintiff

DATED this 29th day of January, 2021.

/s/ Carol Rojas

An Employee of OGLETREE, DEAKINS,
NASH, SMOAK & STEWART, P.C.